

LLEWELLYN B. GRIFFITH

JUNE 27, 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2046]

The Committee on the Judiciary, to which was referred the bill (S. 2046) for the relief of Llewellyn B. Griffith, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

Page 2, line 12, change the period to a colon and insert the following:

Provided, That the passage and approval of this legislation shall not be construed as an inference of liability on the part of the Government of the United States.

PURPOSE

The proposed legislation would confer jurisdiction upon the Court of Claims to hear, determine, and render judgment on the claim of Llewellyn B. Griffith arising out of the failure of the War Department to certify him for retirement as an emergency officer pursuant to the provisions of the Emergency Officers' Retirement Act, as amended (45 Stat. 735), or to retire him as a disabled officer of the Regular Army of the United States, as the facts may justify. The bill further provides that should the court decide that claimant should have been so certified or retired, judgment shall be rendered in an amount equal to the amount he would have received had he been so certified or retired. Section 2 of the bill would provide that suit may be instituted at any time with 4 months after date of the enactment of the act, and that proceedings for the determination of such claim, and appeal from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which the Court of Claims has jurisdiction as now provided by law.

STATEMENT

The history of this legislation indicates that there have been nine bills introduced in the claimant's behalf, not including the proposed legislation, and the Department of the Army has not favored the enactment of any of the bills.

While there is a great deal of history relative to this matter contained in the attached report of the Department of the Army, the facts briefly are as follows:

The claimant, Llewellyn B. Griffith, was graduated from the United States Military Academy in 1917 and was appointed a second lieutenant in the Regular Army. He served overseas, and upon his return to this country, after a period of service with the Corps of Engineers on the Ohio River, was honorably discharged on November 10, 1922, with 1 year's pay, under the act of June 30, 1922, which provided for a large reduction in the commissioned personnel of the Army. Prior to his discharge under that act, claimant had filed for disability discharge on the ground that he had asthma, but the board of medical officers found that he was fit for service.

Since his discharge the claimant has made a number of requests for retirement under the Emergency Officers' Retirement Act for physical disability of service origin. As the Department of the Army has consistently refused to certify that claimant served as an emergency officer during World War I, the Veterans' Administration has declined to consider his application for retirement as an emergency officer under the act heretofore cited.

In 1951 the claimant filed an application with the Army Board on Correction of Military Records requesting that his records be changed to show him eligible for retirement under the Emergency Officers' Retirement Act. His contention before that board was that he was an emergency officer from October 30, 1917, the day he was promoted to the temporary rank of captain, until November 8, 1918, when he was given a recess appointment as captain in the Corps of Engineers. The board, however, found that the claimant's appointment as a temporary captain and his subsequent discharge as such had no bearing on his continued status as a commissioned officer in the Regular Army; that he was and continued to be an officer of the Regular Army from the time of his original appointment to the Regular Army until his request for discharge therefrom; that he was never an emergency officer within the meaning of the Emergency Officers' Retirement Act of 1928 and was not, therefore, eligible for retirement thereunder; and recommended that his application be denied.

The Department of the Army is of the opinion that enactment of this bill would be highly discriminatory in that it would give to the claimant the right to sue the United States in the Court of Claims upon his claim for retirement benefits, a right that is not granted by general law to all other former officers in like circumstances, and that there are no circumstances present in the case which would warrant singling out this claimant for such preferential treatment. The Department of the Army again requests that the bill be not favorably considered, and the Department of Justice concurs in the views of the Department of the Army.

The claimant has filed memoranda and documents which tend to controvert the statements and conclusions reached by the Department

of the Army and sets forth as a basis for relief the action taken on S. 1991 of the Seventy-fourth Congress for the relief of Wilson G. Bingham. This bill was enacted into law and became Private Law 435 of the Seventy-fourth Congress.

A portion of Senate Report No. 1012 of the Seventy-fourth Congress is set forth as follows:

The purpose of this measure is to consider Wilson G. Bingham, late captain of Infantry, United States Army, to have been honorably discharged as an emergency officer and in the grade of captain of Infantry on December 15, 1922. During the Seventy-third Congress, second session, both Houses of Congress acted favorably on H. R. 2632, which had for its purpose the summoning of Wilson G. Bingham before a retiring board with a view to determining all facts covering the nature of his disabilities, whether such disabilities were an incident of service, and to retiring him as a captain, Regular Army. This bill, H. R. 2632, was vetoed by the President on the grounds that the claimant had voluntarily resigned 4 years after the close of the World War, and should not be reinstated and retired as a captain. In vetoing H. R. 2632, however, the President stated he would approve a bill to extend to the claimant the benefits of the Emergency Officers' Retirement Act. Therefore, S. 1991 was drafted and introduced for the purpose of granting Mr. Bingham this form of relief.

The claimant entered West Point in June 1914 at the age of 17. He was graduated from West Point on August 30, 1917, and on that date commissioned second lieutenant, Infantry, Regular Army, and assigned to the Twenty-second Infantry. With this regiment, he performed guard duty at Frankford Arsenal from October 1917 to March 1918. He was then commissioned first lieutenant, Infantry, dating to August 30, 1917, and in accord with his often-expressed desire for overseas service, Lieutenant Bingham was transferred to the Sixth Infantry, Fifth Division, and sailed to France in April 1918.

Captain Bingham made no application to the Veterans' Bureau until 1928, because he felt that prior to that time he had no standing with that Bureau, having been in the Regular Army. On July 12, 1928, it was suggested that he apply for retirement under the Emergency Officers' Retirement Act. This was refused, because it was held that his entire service was as a Regular Army officer, and he was therefore not entitled to the privileges of emergency officers.

On Captain Bingham's last examination at the Veterans' Administration in October 1932 he was given a permanent rating of 31 percent on "scar left ankle, with adhesions, gunshot wound, with secondary third degree flat foot, left, the wound causing the inner side of the ankle and foot to sag and flatten." He also had a 13-percent permanent on disability of "pes planus" and in addition a 56-percent permanent rating for "traumatic neurosis." These ratings total 100 percent permanent, but on the Veterans' Administration combined rating a permanent rating of 74 percent is given, all directly service-connected, from combat wounds. * * *

Senate Report 1012 of the Seventy-fourth Congress quotes House report 241, Seventy-second Congress in part as follows:

* * * Under the Emergency Officers' Retirement Act approximately 6,900 former emergency officers have been retired since 1938 with a required 30 percent permanent disability or more, about one-half of whom were presumed to have service-connected disabilities. Many of them were tendered Army commissions on July 1, 1920, and refused them. Furthermore, by decision of the Comptroller General, A 24496, March 12, 1930, emergency officers who later held commissions in the Regular Army, and who became 30 percent or more permanently disabled (either service connected or presumptive) as a result of their World War service were entitled to retirement under the Emergency Officers' Retirement Act.

Since Wilson G. Bingham was refused retirement under the Emergency Officers' Retirement Act he is left an "orphan," so far as general legislation is concerned, and the passage of this special act is necessary to accord him the rights to which he is entitled both in law and equity. * * *

The committee after a consideration of all of the facts in this case is led to the belief that this is a matter to be adjudicated by the court. The committee does not wish to express any view as to the merits or lack of merits of the claim, but does believe that in the interests of

finality and so as to be sure that no injustice is done this claimant, that S. 1991 should be considered favorably.

DEPARTMENT OF THE ARMY,
Washington, D. C., February 18, 1952.

The honorable the ATTORNEY GENERAL,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: Reference is made to your letter with which you enclosed a copy of S. 2046, Eighty-second Congress, a bill to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of Llewellyn B. Griffith for retirement as an emergency officer under the provisions of Emergency Officers' Retirement Act or as a disabled officer of the Regular Army of the United States. You state that the Senate Committee on the Judiciary has requested the Department of Justice to submit a report on this bill and has advised that if reports are necessary from other sources, they will be secured by your Department and submitted along with your report to the committee. You, therefore, request the comments of the Department of the Army on S. 2046.

This bill provides as follows:

"That jurisdiction is hereby conferred upon the Court of Claims of the United States, notwithstanding the lapse of time or any statute of limitations, or any other limitation upon the jurisdiction of such court, to hear, determine, and render judgment on the claim of Llewellyn B. Griffith arising out of the failure of the War Department to certify him for retirement as an emergency officer pursuant to the provisions of the Emergency Officers' Retirement Act, as amended (45 Stat. 735), or to retire him as a disabled officer of the Regular Army of the United States, as the facts may justify. In its consideration of such claim, the court shall determine whether or not the said Llewellyn B. Griffith should have been certified for retirement as an emergency officer or retired as a disabled officer of the Regular Army. Should the court decide that the said Llewellyn B. Griffith should have been so certified or retired, judgment shall be rendered in an amount equal to the amount the said Llewellyn B. Griffith would have received had he been so certified or retired.

"SEC. 2. Suit upon such claim may be instituted at any time within four months after the date of the enactment of this Act. Proceedings for the determination of such claim, and appeal from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which the Court of Claims has jurisdiction as now provided by law."

Llewellyn B. Griffith (formerly known as "Llewellyn Mason Griffith") was born in Baltimore, Md., on November 17, 1894, was appointed a cadet at the United States Military Academy on June 15, 1914, and was graduated therefrom on August 30, 1917. He was appointed a second lieutenant in the Corps of Engineers, Regular Army, effective August 30, 1917, and he executed the oath of office as such on October 10, 1917. On October 11, 1917, Lieutenant Griffith was promoted to the grade of first lieutenant in the Corps of Engineers, to rank from August 30, 1917, and he took the oath of office as first lieutenant on October 19, 1917. On October 12, 1917, Lieutenant Griffith was appointed a temporary captain in the Corps of Engineers, to rank from August 30, 1917, but on October 15, 1917, The Adjutant General of the Army wrote a letter to him advising him that he was not entitled to promotion to the rank of captain and directing that he return said commission to The Adjutant General. That commission was duly returned to The Adjutant General, and it was canceled, the face of the commission being marked "Canceled Dec. 7, 1917." On October 30, 1917, Lieutenant Griffith was promoted to the temporary grade of captain in the Corps of Engineers, to rank as such from August 30, 1917, and he duly took the oath of office under that appointment on November 9, 1917. On December 31, 1917, a commission was issued appointing Captain Griffith provisionally to the rank of first lieutenant in the Corps of Engineers, to rank as such from August 30, 1917, but the records of the Department of the Army fail to disclose that he ever took the oath of office under that appointment.

On February 7, 1918, a commission was issued appointing Captain Griffith a temporary captain in the Corps of Engineers, but the records of the Department of the Army fail to disclose that he ever took the oath of office under such appointment. On November 29, 1918, a commission was issued giving Captain Griffith a recess appointment as a captain in the Corps of Engineers, to rank as such from October 23, 1918, but the records of the Department fail to disclose that he ever took the oath of office under that appointment. The last-mentioned appointment

was superseded on March 8, 1919, when Captain Griffith was given a recess appointment as a captain in the Corps of Engineers, with rank from October 21, 1918, but the records of the Department of the Army fail to disclose that he ever took the oath of office under the appointment of March 8, 1919. On July 15, 1919, a commission was issued appointing Captain Griffith a captain in the Corps of Engineers, by and with the advice and consent of the Senate, to rank as such from October 21, 1918. The records of the Department of the Army show that he took the oath of office as captain under that appointment on December 14, 1919. By Special Orders No. 98-0, issued by the Secretary of War, and dated April 26, 1920, Captain Griffith was honorably discharged from his temporary commission as captain.

On September 13, 1937, the claimant wrote a letter to The Adjutant General of the Army in which he referred to the commission dated December 31, 1917, appointing him a provisional first lieutenant and requested advice as to whether he ever became a provisional first lieutenant by virtue of such commission. On September 20, 1937, The Adjutant General advised the claimant that the commission dated December 31, 1917, appointing him a provisional first lieutenant was issued through error, that there was no record of it ever having been accepted, and requested him to return it to The Adjutant General for cancellation.

Captain Griffith sailed for France on August 31, 1918, for service with the American Expeditionary Forces. He served in France with the Six Hundred and Third Engineers and participated in the Meuse-Argonne offensive. After the armistice on November 11, 1918, he served with the American Army of Occupation in Germany until August 1919, when he returned to the United States. Captain Griffith states that he had mild attacks of asthma in France, but did not have a severe attack until December 1919, after he had returned to the United States.

It appears that on August 20, 1921, Captain Griffith entered upon duty with the Corps of Engineers on the Ohio River, where he continued to serve until August 1922. He states that while he was on duty on the Ohio River he suffered with an asthmatic condition, and it appears that in or about the month of July 1922 he requested a transfer at his own expense to San Antonio, Tex., but the request was not granted.

By the act of June 30, 1922 (42 Stat. 716, 721-723), the Congress directed a large reduction in the commissioned personnel of the Army, which was to be accomplished by the retirement and discharge of officers upon the recommendation of a board of general officers. The act provided, among other things that "officers selected for elimination of less than 10 years' commissioned service may, upon recommendation of the board * * *, be discharged with 1 year's pay * * *." For the purpose of carrying out the provisions of this act the War Department issued Circular No. 152, dated July 17, 1922, entitled "Regulations Governing Reduction in the Number of Officers." The regulations in question provided that "The officers retired or discharged will be those whom the board considers for any reason least suitable for retention under the circumstances" and that "In accomplishing the required reduction the interests of the Government will be paramount to those of individuals." The regulations also provided that reductions might be accomplished by retirement for disability, retirement for length of service, retirement or discharge of officers placed in class B under the provisions of the National Defense Act of 1916, or by dismissals and resignations.

On July 1, 1922, Captain Griffith filed an application with the Chief of Engineers, United States Army, for his discharge from the Army under the provisions of the act of June 30, 1922, *supra*. On July 21, 1922, the Chief of Engineers transmitted the application to The Adjutant General of the Army with the recommendation that he be discharged with 1 year's pay. Before any action was taken on that application Captain Griffith, on August 1, 1922, filed with The Adjutant General of the Army an application to appear before an Army retirement board, and there were attached to such application statements from certain private physicians who had treated him for asthma. He was thereupon ordered to report to the station hospital, Fort Sam Houston, Tex., on August 14, 1922, for observation and treatment. He appeared before a board of Army medical officers at said hospital on August 19, 1922, which on the same date submitted a report which reads in pertinent part as follows:

"FINDINGS

"1. Captain Griffith has been a patient in this hospital since August 14, 1922.

"2. The board after careful consideration of the history, hospital records and certificates of civilian physicians of San Antonio and physical examination of this officer, is unable to find any indication or symptoms of asthma since he entered the hospital.

"CONCLUSIONS

"1. That he is fit for full field service.

"RECOMMENDATIONS

"1. That he be returned to duty."

Thereafter on August 23, 1922, Captain Griffith filed with The Adjutant General of the Army another request that he be discharged from the Army under the provisions of the act of June 30, 1922, *supra*. In his letter requesting his discharge Captain Griffith stated:

"1. In accordance with the provision of paragraph 8, War Department Circular No. 152 dated July 17, 1922, I desire to submit to the board the following statement relative to my present and probable future effectiveness.

"2. For a life career I do not like military service and therefore think that it is for the best interests of the Army that I be discharged.

"3. There are also many minor facts affecting me directly and indirectly which render my service to the Army less effective. For example I have asthma, which develops under certain climatic conditions and greatly handicaps me physically. Furthermore, my wife has not been well due to certain climatic conditions. Her health affects my efficiency indirectly. There are many other facts which taken together make me unsuited for military career.

"4. In view of the above I request that I be discharged with 1 year's pay so that I may start in civil life at this time."

Paragraph 8 of War Department Circular No. 152, dated July 17, 1922, cited by Captain Griffith in his above-quoted request for discharge, provided as follows:

"8. Any officer in the service, who so desires, may submit through military channels, for consideration by the board a statement bearing upon his past, present, or probable future effectiveness. Should the officer believe that, for any reason, it will be best for the interests of the service that he be retired or discharged, his statement will clearly set forth such reasons."

On October 11, 1922, The Adjutant General advised Captain Griffith that upon the recommendation of the board of general officers convened pursuant to the provisions of the act of June 30, 1922, *supra*, he had been selected by the President as one of the officers to be discharged in accomplishing the reduction in the number of officers in the Army that had to be made in accordance with that act, and that he would be discharged with 1 year's pay. Thereafter on November 10, 1922, Captain Griffith was honorably discharged from the Army with 1 year's pay. On the same date, and immediately prior to his discharge from the Army, Captain Griffith was given a general physical examination at the station hospital at Fort Sam Houston, Tex., and in his report of the examination the examining surgeon stated:

"I certify that—

"The officer named above (Capt. Llewellyn B. Griffith) has been given a careful physical examination, and is found that:

"He is physically and mentally sound with the following exceptions:"

(Describe the nature and location of the defect, wound, injury, or disease.)

"Asthma, bronchial, probably chronic, was seen in one mild attack in September 1922.

"The wound, injury, or disease is not likely to result in death or disability.

"In my opinion the wound, injury, or disease did originate in the line of duty in the military service of the United States.

"In view of occupation he is 10-percent disabled."

At the time of his discharge from the Army this officer signed a formal statement in which he acknowledged receipt of the notice of his separation from the service, stated that he did not desire a commission in the Officers' Reserve Corps, and that he was suffering from the effects of a disease incurred in the military service of the United States.

The law in effect at the time the board of Army medical officers submitted its report on August 19, 1922, in which it found that Captain Griffith was fit for full

field service and recommended that he be returned to duty, as well as at the time of his discharge from the Army on November 10, 1922, provided that for an Army officer to be retired because of physical disability it was necessary to find that he was incapacitated for active service and that his incapacity had resulted from an incident of service (sec. 1251 of the Revised Statutes; 10 U. S. C. 933). It, therefore, seems clear that Captain Griffith was not entitled in 1922 to be retired from the Army because of physical disability.

Since his discharge Captain Griffith has made a number of requests for retirement under the Emergency Officers' Retirement Act, approved May 24, 1928 (45 Stat. 735; 38 U. S. C. 581), for physical disability of service origin. That act provides in pertinent part as follows:

"That all persons who have served as officers of the Army, Navy, or Marine Corps of the United States during the World War, other than as officers of the Regular Army, Navy or Marine Corps who during such service have incurred physical disability in line of duty, and who have been, or may hereafter, within one year, be, rated in accordance with law at not less than 30 per centum permanent disability by the United States Veterans' Bureau for disability resulting directly from such war service, shall, from date of receipt of application by the Director of the United States Veterans' Bureau, be placed upon, and thereafter continued on, separate retired lists, hereby created as part of the Army, Navy, and Marine Corps of the United States, to be known as the emergency officers' retired list of the Army, Navy, or Marine Corps of the United States, respectively, with the rank held by them when discharged from their commissioned service, and shall be entitled to the same privileges as are now or may hereafter be provided for by law or regulations for officers of the Regular Army, Navy, or Marine Corps who have been retired for physical disability incurred in line of duty, and shall be entitled to all hospitalization privileges and medical treatment as are now or may hereafter be authorized by the United States Veterans' Bureau, and shall receive from date of receipt of their application retired pay as the rate of 75 per centum of the pay of which they were entitled at the time of their discharge from their commissioned service, except pay under the Act of May 18, 1920."

The name of the Veterans' Bureau was changed to Veterans' Administration on July 21, 1930 (38 U. S. C. 11). Inasmuch as the War Department and the Department of the Army have consistently refused to certify that Captain Griffith served as an emergency officer during World War I, the Veterans' Administration has declined to consider his application for retirement as an emergency officer under the Emergency Officers' Retirement Act of 1928.

Since Captain Griffith's discharge from the Army the following bills have been introduced in the Congress for his relief: S. 3780, Seventy-first Congress; H. R. 9606, Seventy-first Congress; S. 2281, Seventy-second Congress; H. R. 3954, Seventy-second Congress; S. 4436, Seventy-fourth Congress; S. 4446, Seventy-fourth Congress; H. R. 12232, Seventy-fourth Congress; S. 38, Seventy-fifth Congress; and S. 503, Seventy-sixth Congress.

The first bill in question, S. 3780, Seventy-first Congress, if enacted, would have provided "That any disability incurred in line of duty by Llewellyn B. Griffith while serving as an officer of the Army of the United States during the World War shall be deemed and considered to have been so incurred while serving as an officer of the Army of the United States other than as an officer of the Regular Army, so as to entitle said Griffith to the benefits and privileges of the Emergency Officers' Retirement Act (Public No. 506, 70th Cong.): *Provided*, That such disability rating is sufficient and said Griffith is otherwise eligible for retirement under the terms and conditions of said Act; *Provided further*, That said Griffith shall not be entitled to any back pay or allowances by the passage of this Act."

The War Department did not favor the enactment of any of the above-mentioned bills, and none of them was enacted.

On April 17, 1951, Captain Griffith filed an application with the Army Board on Correction of Military Records, requesting that his records in the Department of the Army be changed to show him eligible for retirement under the Emergency Officers' Retirement Act. It appears that he contended before said Board, and that he still contends, that he was an emergency officer from October 30, 1917 (the date he was promoted to the temporary rank of captain), until November 29, 1918 (when a commission was issued giving him a recess appointment as captain in the Corps of Engineers). On May 22, 1951, the Board submitted a report on the case to the Secretary of the Army, which reads in pertinent part as follows:

"The Board finds—

"1. That the applicant has exhausted all remedies afforded him by existing law or regulations.

"2. That upon graduation from the United States Military Academy, applicant was commissioned a second lieutenant in the Regular Army. That he was promoted to first lieutenant, Regular Army, October 19, 1917, and accepted such promotion October 20, 1917.

"3. That on October 13, 1917, applicant was erroneously promoted to the grade of captain in the Regular Army, which promotion was canceled by The Adjutant General on October 15, 1917, when it was found he was not entitled to such promotion. That the cancelation of the afore-mentioned promotion did not disturb or revoke applicant's status as the holder of a commission as first lieutenant in the Regular Army.

"4. That applicant was granted a temporary promotion to captain November 12, 1917, and received a permanent appointment as captain November 29, 1918. That the appointment and subsequent discharge of applicant as a temporary captain had no bearing on his continuing status as a commissioned officer in the Regular Army.

"The board concludes:

"1. That it was the belief and intent of both the applicant and the Department of the Army that applicant was, and intended to continue to be, an officer of the Regular Army from the time of his original appointment to the Regular Army until his request for discharge therefrom.

"2. That the applicant was never an emergency officer within the meaning of the Emergency Officers' Retirement Act of 1928, and was not therefore eligible for retirement thereunder.

"3. That no error or injustice in the military records of the applicant is shown under the standards of procedure and administration then in effect and that the military records of applicant disclose no basis for granting his request.

"The board recommends:

"That in the case of former Capt. Llewellyn B. Griffith, his application for correction of military records, dated April 17, 1951, be denied."

On May 28, 1951, Captain Griffith's application was denied by the Secretary of the Army in the following memorandum:

"Having received and approved the recommendations of the Army Board on Correction of Military Records in the case of former Capt. Llewellyn B. Griffith (no Army serial number), and under the authority vested in me by section 207 of the Legislative Reorganization Act of 1946 (Public Law 601, 79th Cong.), it is directed:

"That in the case of former Capt. Llewellyn B. Griffith, his application for correction of military records, dated April 17, 1951, be and hereby is denied."

For a person to be entitled to receive retired pay under the Emergency Officers' Retirement Act of 1928, *supra*, it is necessary to establish that he served as a commissioned officer during World War I other than as an officer of the Regular Army, Navy, or Marine Corps. Counsel for Captain Griffith have contended before the Department of the Army that inasmuch as he served as a temporary captain in the Corps of Engineers from October 30, 1917, until November 29, 1918, when a commission was issued giving him a recess appointment as a captain in the Corps of Engineers, he was during such period of time an emergency officer within the meaning and purview of the Emergency Officers' Retirement Act. The temporary promotion of Captain Griffith on October 30, 1917, to the grade of captain did not purport to be in any component of the Army other than the Regular Army. Such promotion was made pursuant to the authority of section 8 of the act of May 18, 1917 (40 Stat. 76, 81), as amended by the act of April 20, 1918 (40 Stat. 534), which authorized the temporary promotion of officers of the Regular Army below the grade of colonel before they were eligible for promotion to the next permanent grade in the Regular Army.

The case of Lt. Norman Scott Cooper involved in part the same principle involved in the instant case. In that case the evidence showed that on November 17, 1917, the claimant, a physician, entered upon active duty in the United States Navy as an emergency officer (lieutenant (junior grade) in the Naval Coast Defense Reserve); that on January 3, 1918, he was commissioned a lieutenant (junior grade) in the Medical Corps of the Regular Navy; that on Novem-

ber 28, 1918, he was promoted to the temporary grade of lieutenant; and that he resigned from the Regular Navy effective December 24, 1919. It appears that after the enactment of the Emergency Officers' Retirement Act in 1928 Lieutenant Cooper sought retirement benefits thereunder. On March 12, 1930, the Comptroller General rendered a decision (9 Comp. Gen. 399) in which he held that Lieutenant Cooper was entitled to be retired under the Emergency Officers' Retirement Act by reason of his service as an emergency officer from November 17, 1917, to January 3, 1918 (the date of his appointment as an officer of the Regular Navy), but only at the grade of lieutenant (junior grade), the highest grade that had been held by him as an emergency officer. The Comptroller General specifically held that he was not entitled to be retired at the temporary grade of lieutenant to which he was appointed after he was commissioned a lieutenant (junior grade) in the Regular Navy. The Comptroller General in his decision on the case said (p. 404):

"In the case of Cooper, it will be noted that his emergency service was terminated by his appointment in the Regular Navy, that his grade or rank in the Naval Reserve Force (emergency service) was that of a lieutenant (junior grade), but that after his appointment in the Regular Navy he was given a temporary advanced grade, that of lieutenant, as was the case with respect to practically all officers of the regular establishments. He is entitled to retirement and to pay under the act of 1928 on the basis of pay of the grade held by him when separated from his emergency status, that is, lieutenant (junior grade) notwithstanding that while under appointment in the regular Navy, he was given a temporary appointment as lieutenant."

The Judge Advocate General of the Army has consistently held that individuals in circumstances similar to those of Captain Griffith were not entitled to be retired under the Emergency Officers' Retirement Act of 1928.

Inasmuch as the entire service of Captain Griffith in the United States Army was in the status of a Regular Army officer, he was never an emergency officer within the meaning of the Emergency Officers' Retirement Act, and, accordingly, was not entitled to the benefits of said act. He, therefore, could not legally be certified to the Veterans' Administration as an emergency officer.

Aside from the fact that the claimant is not legally entitled to the benefits of the Emergency Officers' Retirement Act, there is no equitable basis for the granting of the special relief proposed by this bill. As hereinbefore shown, the claimant on July 1, 1922, filed an application for his discharge from the Army as a surplus officer under the provisions of the act of June 30, 1922, but before any action was taken on that application he decided, to and did, seek to be retired on the ground of physical disability. After having been found by a board of Army medical officers to be suffering from no physical disability that would entitle him to retirement, and being found fit for full field service, he then renewed his application for discharge from the Army as a surplus officer in accordance with the provisions of the act of June 30, 1922, and was discharged under the provisions of that act, receiving 1 year's extra pay at the time of his discharge. The Veterans' Administration has advised the Department of the Army that Captain Griffith was first rated by the Veterans' Bureau on November 10, 1923, as having a service-connected temporary partial disability of 10 percent on account of bronchial asthma; that he was not rated as having a service-connected disability of 30 percent or more until December 27, 1929; and that he is now rated as having a 30 percent service-connected disability, but is receiving compensation of \$60 per month under a "protected rating permanent partial 40 percent." Under this state of facts the Department of the Army can perceive no justifiable ground for the enactment of the extraordinary legislation proposed by this bill.

Counsel for Captain Griffith have cited as a precedent for the enactment of the present bill, S. 991, Seventy-fourth Congress, approved March 16, 1936 (49 Stat. 2239), which was enacted for the relief of Wilson G. Bingham, formerly a captain the Regular Army, who had been discharged as a surplus officer on December 15, 1922. That act provided, in pertinent part, as follows:

"That in the administration of the benefits and privileges of the Emergency Officers' Retirement Act of May 24, 1928 (45 Stat. 735), Wilson G. Bingham, late captain of Infantry, United States Army, shall be held to have been honorably discharged as an emergency officer and in the grade of captain of Infantry on December 15, 1922: *Provided*, That no back pay or allowances shall be held to have accrued prior to the passage of this Act."

Subsequent to the discharge of Captain Bingham from the Army it was determined by the Veterans' Administration that he was entitled to compensation by reason of service-connected disability in the amount of \$74 per month, or \$888

per annum. His service-connected disability was determined to be somewhat greater than that from which Captain Griffith was in 1922, and is now, suffering. Furthermore, it appears that the President approved S. 1991, Seventy-fourth Congress, for the relief of Captain Bingham, solely because he had previously committed himself to the approval of such legislation. This is shown by a letter from the President to the chairman, Committee on Military Affairs, United States Senate, dated March 19, 1936, in which he set forth the facts concerning his approval of the bill and stated that such approval "should under no condition be considered as a precedent for any similar legislation." The text of said letter reads as follows:

"On March 6, 1936, the Congress sent to me for my approval S. 1991, Seventy-fourth Congress, entitled 'An Act for the relief of Wilson G. Bingham.'

"This man as I understand it is a former Regular Army officer who served as such from the date of his graduation from the United States Military Academy, August 30, 1917, to December 15, 1922, when he voluntarily resigned his commission in order to return to civil life and who at no time served as an emergency officer. Thereafter he made claim of the Veterans' Administration for compensation on account of service-connected disability, which claim was duly adjudicated and he is now receiving \$888 per annum thereunder.

"Special relief legislation was subsequently passed by Congress to increase the benefits he was receiving, and on June 26, 1934, I vetoed H. R. 2632, Seventy-third Congress, entitled 'An act for the relief of Wilson G. Bingham,' which would have provided for his retirement with the same privileges and pay as are provided for officers of the Regular Army, giving therefore the following reason:

"'Because this officer voluntarily resigned 4 years after the close of the World War he should not be reinstated and retired as a captain.

"'I would approve a bill to extend him the benefits of the Emergency Officers' Retirement Act.'

"While at that time I was advised that such a proposal seemed to be feasible, nevertheless in considering this new bill, S. 1991, certain aspects of law, as well as of equity and uniformity, have been brought to my attention which would have caused me to decide this matter also in the negative, had previous commitment not been made.

"I am therefore advising you that while I have approved this particular relief bill it should under no condition be considered as a precedent for any similar legislation, and I earnestly hope that any future bills of this character will not receive the approval of the committee."

Finally, the enactment of this bill would be highly discriminatory in that it would give to the claimant the right to sue the United States in the Court of Claims upon his claim for retirement benefits, a right that is not granted by general law to all other former officers in like circumstances, and there are no facts or circumstances present in this case which would warrant singling out this claimant for such preferential treatment.

After a careful consideration of all the facts and circumstances in this case the Department of the Army is of the view that there is no legal or equitable basis for the enactment of this bill. It is, accordingly, recommended that the bill be not favorably considered by the Congress.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 14, 1952.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2046) to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of Llewellyn B. Griffith for retirement as an emergency officer under the provisions of Emergency Officers Retirement Act or as a disabled officer of the Regular Army of the United States.

The bill would confer jurisdiction upon the Court of Claims to hear, determine, and render judgment on the claim of Llewellyn B. Griffith arising out of the failure of the War Department to certify him for retirement as an emergency officer pursuant to the provisions of the Emergency Officers Retirement Act, as amended (45 Stat. 735), or to retire him as a disabled officer of the Regular Army of the United States, as the facts may justify. The bill further provides that, should the court decide that claimant should have been so certified or retired, judgment shall be rendered in an amount equal to the amount he would have received had he been so certified or retired. Section 2 of the bill would provide that suit may be instituted at any time within 4 months after date of the enactment of the act, and that proceedings for the determination of such claim, and appeal from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which the Court of Claims has jurisdiction as now provided by law.

In compliance with your request, a report was obtained from the Department of the Army concerning this legislation. That report, which is enclosed, sets out in detail claimant's military service record and the various steps he has taken up to this time to have himself certified for retirement as an emergency officer or as a disabled officer of the Regular Army. Briefly stated, it appears that he graduated from the United States Military Academy in 1917 and was appointed a second lieutenant in the Regular Army. He served overseas, and upon his return to this country, after a period of service with the Corps of Engineers on the Ohio River, was honorably discharged on November 10, 1922, with 1 year's pay under the act of June 30, 1922 (42 Stat. 716, 721-723) which provided for a large reduction in the commissioned personnel of the Army. Prior to his discharge under that act, claimant had filed for disability discharge on the ground that he had asthma, but he was found fit for service by a board of medical officers.

Since his discharge claimant has made a number of requests for retirement under the Emergency Officers Retirement Act (38 U. S. C. 581) for physical disability of service origin. As the Department of the Army has consistently refused to certify that claimant served as an emergency officer during World War I, the Veterans' Administration has declined to consider his application for retirement as an emergency officer under the foregoing act.

The Army report points out that up to the present time, nine bills have been introduced in claimant's behalf, not including the instant bill, and the Department of the Army has not favored the enactment of any of them. In 1951 claimant filed an application with the Army Board on Correction of Military Records requesting that his records be changed to show him eligible for retirement under the Emergency Officers Retirement Act. It appears that he contended before that Board, and that he still contends, that he was an emergency officer from October 30, 1917, the day he was promoted to the temporary rank of captain, until November 9, 1918, when he was given a recess appointment as captain in the Corps of Engineers. The Board, however, found that claimant's appointment as a temporary captain, and subsequent discharge as such, had no bearing on his continued status as a commissioned officer in the Regular Army; that he was, and intended to continue to be, an officer of the Regular Army from the time of his original appointment to the Regular Army until his request for discharge therefrom; that he was never an emergency officer within the meaning of the Emergency Officers Retirement Act of 1928 and was not, therefore, eligible for retirement thereunder; and recommended that his application be denied.

The Department of the Army states that enactment of this bill would be highly discriminatory in that it would give to claimant the right to sue the United States in the Court of Claims upon his claim for retirement benefits, a right that is not granted by general law to all other former officers in like circumstances, and that there are no facts or circumstances present in the case which would warrant singling out this claimant for such preferential treatment. It therefore recommends that the bill be not favorably considered.

The Department of Justice concurs in the views of the Department of the Army. The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

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The first of these is the fact that the United States is a young nation, and that its history is a history of growth and development. It is a history of a people who have been able to adapt themselves to a changing world, and who have been able to maintain their principles in the face of adversity. The second fact is that the United States is a nation of immigrants, and that its history is a history of the struggle for a better life. The third fact is that the United States is a nation of free men, and that its history is a history of the struggle for freedom.

The history of the United States is a history of a people who have been able to adapt themselves to a changing world, and who have been able to maintain their principles in the face of adversity. It is a history of a people who have been able to adapt themselves to a changing world, and who have been able to maintain their principles in the face of adversity. It is a history of a people who have been able to adapt themselves to a changing world, and who have been able to maintain their principles in the face of adversity. It is a history of a people who have been able to adapt themselves to a changing world, and who have been able to maintain their principles in the face of adversity.

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